

STATE OF NEW YORK
DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
JACK URIEL	:	DETERMINATION
	:	DTA NO. 814424
for Revision of a Determination or for	:	
Refund of Sales and Use Taxes under Articles	:	
28 and 29 of the Tax Law for the Year 1994.	:	

Petitioner, Jack Uriel, 19 Arba Aratzot, Tel Aviv, Israel 62486, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the year 1994.

On or about February 28, 1996,¹ petitioner, appearing pro se, and the Division of Taxation by Steven U. Teitelbaum, Esq. (Andrew S. Haber, Esq., of counsel), consented to have the controversy determined on submission without a hearing. All documents and briefs to be submitted by the parties were due by July 22, 1996, which date began the six-month period for the issuance of this determination. The Division of Taxation filed its documents on April 2, 1996. Petitioner did not submit any documents or briefs. The Division of Taxation submitted its brief on May 24, 1996.

Based upon all documents submitted, Winifred Maloney, Administrative Law Judge, renders the following determination.

ISSUE

Whether the Division of Taxation properly denied petitioner's claim for refund of sales tax paid on furniture shipped to Israel.

¹The date upon which petitioner executed the waiver of hearing is listed as "Feb 96".

FINDINGS OF FACT

1. Petitioner, Jack Uriel, did not submit either documentary evidence or a brief in this matter. However, as part of its documentary evidence, the Division submitted a copy of petitioner's claim for refund with attachments (see, Division's Exhibit "A").

2. On July 7, 8 and 28, 1993, petitioner purchased various pieces of furniture from IKEA in Hicksville, New York. At the time of the furniture purchases, petitioner took some of the furniture with him -- "cash and carry"; while other items were delivered to him in care of Omega Shipping Co., Inc. ("Omega"), 30-30 Review Avenue, Long Island City, New York.²

3. According to the nonnegotiable bill of lading issued by Omega on August 2, 1993, petitioner had arranged with Omega to ship to him in Israel one 20-foot "house to house container" on the vessel Zim Keelung.³ The contents of the container were described as "187 pieces of used household and personal effects" including "items from IKEA".⁴

4. On August 4, 1993, petitioner filed a claim for refund of sales tax in the amount of \$481.09. His address on the refund claim was listed as "117-01C Park Lane South, Apt. 4A, Kew Gardens, New York, N.Y."⁵ In the refund claim, petitioner stated, inter alia, that "the merchandise for which sales tax was paid was purchased for use overseas" in Israel. Attached to the refund claim were photocopies of various receipts.

5. On December 20, 1993, Claudia M. Cannavo of the Division of Taxation's (the "Division") Central Sales Tax Section sent a letter to petitioner at his Kew Gardens, New York address. In this letter, Ms. Cannavo wrote:

"Your claim for a refund of sales tax is being denied in full.

²An "Order Confirmation", dated July 7, 1993, was included as part of the Division's Exhibit "A". This order listed furniture which was to be shipped to petitioner in care of Omega. Review of this order reveals that the buyer and receiver were both listed as petitioner.

³Petitioner is listed as the shipper on the nonnegotiable bill of lading.

⁴Although the nonnegotiable bill of lading referenced a list of items from IKEA, the list is not part of the record.

⁵Petitioner noted on the refund claim that after September 1, 1993 any refund was to be sent to him at "Arba Aratzot 19, Tel Aviv, Israel 62486."

"Tangible personal property purchased and taken possession of by the purchaser in New York State is taxable. In order to be exempt, the merchandise must be shipped out of the state by the seller and not taken out by the purchaser.

"This determination denying your claim in full shall, according to law, be final and irrevocable unless you complete the enclosed TA-9.1 and submit it for a hearing within 90 days from the date of this letter, in accordance with the provisions of section 1139(b) of the Tax Law."

6. Petitioner sent a letter from Israel to the Division, dated May 19, 1994, referencing some correspondence which he had received from the Division some time in April. In this letter, petitioner stated that he could not understand why he had not received his sales tax refund inasmuch as he had done everything that he was told to do by both IKEA and the New York State Department of Taxation and Finance. He further stated that if there were any questions or doubts, to "please contact 'OMEGA' for they have all the information needed: dates and details of the container & shipment." In addition, he restated his address in Israel.

7. On October 28, 1994, the Division, by its representative Ms. Cannavo, issued a Notice of Denial in full of petitioner's claim for a refund of sales tax. Ms. Cannavo wrote in pertinent part:

"Tangible personal property purchased and taken possession of by the purchaser in New York State is a taxable transaction. In order to be exempt, the merchandise must be shipped out of the state by the seller and not taken or shipped out by the purchaser.

"Since you personally arranged for the delivery overseas, you actually took delivery in New York State and, therefore, tax was due at that time."

8. In lieu of a conciliation conference, petitioner opted to have the matter decided by correspondence. The Division was represented by Diane Albano, Sales Tax Technician. After giving due consideration to the evidence presented, the conciliation conferee issued a Conciliation Order (CMS No. 145991), dated July 21, 1995, which denied petitioner's request and sustained the statutory notice - the Refund Denial dated October 28, 1994.

9. In a petition to the Division of Tax Appeals, dated September 19, 1995, petitioner challenged the denial of his claim for refund of sales tax in the amount of \$485.00. Attached to the petition is a letter addressed to conciliation conferee James T. Gorton, bearing the date of

September 19, 1995. In this letter, petitioner again outlined the circumstances which precipitated his refund claim.

10. The Division, in its answer, dated December 13, 1995, admitted the allegations in the letter attached to the petition, and stated inter alia that: (1) petitioner purchased furniture from IKEA that was delivered to petitioner's designee, Omega; (2) Omega stored the furniture pending shipment of the goods to Israel; (3) petitioner filed a claim for refund of \$481.09 in sales tax paid on the furniture purchased from IKEA; (4) sales tax is imposed on the transfer of tangible personal property in New York to petitioner or his designee pursuant to Tax Law § 1105(a) and 20 NYCRR 525(2)(a)(3); (5) tangible personal property purchased in New York is subject to New York State and local sales tax regardless of whether it is subsequently taken abroad; and (6) therefore, petitioner's claim for refund was properly denied.

SUMMARY OF THE PARTIES' POSITIONS

11. As noted in Finding of Fact "1", petitioner did not submit any documentary evidence nor did he submit either a brief or a reply brief. Therefore, his assertions must be gleaned from his petition and his claim for refund. Petitioner argues that the Division erroneously disallowed his claim for refund of sales tax paid on furniture purchased by him for use in Israel. He asserts that he did everything that IKEA's and the Division's employees told him to do concerning claiming a refund. Petitioner contends that he submitted copies of the receipts for the furniture, as well as a copy of the nonnegotiable bill of lading which shows that furniture and other personal possessions were in fact shipped to him in Israel.

12. The Division contends that it properly disallowed petitioner's claim for refund of sales tax paid on furniture that was shipped to Israel. It maintains that sales tax is imposed on receipts from the transfer of tangible personal property in New York to the purchaser or his designee. Citing relevant case law, it argues that tangible personal property purchased in New York is subject to the New York State and local sales tax regardless of whether it is subsequently taken abroad.

CONCLUSIONS OF LAW

A. Tax Law § 1105 states, in part:

"there is hereby imposed and there shall be paid a tax . . . upon:

(a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article."

B. 20 NYCRR 525.2(a)(3) provides that:

"The sales tax is a 'destination tax', that is the point of delivery or point at which possession is transferred by the vendor to the purchaser or designee controls both the tax incident and the tax rate."

C. In the instant matter, petitioner contends that the Division erroneously denied his claim for refund of sales tax paid on furniture which he had purchased for use overseas. As noted in Conclusion of Law "B", the sales tax acts as a destination tax where both the tax incident and the tax rate are controlled by the point of delivery or point at which possession is transferred by the vendor to the purchaser. Even if the purchaser has the intent to ship and use the purchases out of New York State, he is not exempt from the sales tax if delivery is accepted within State borders (Matter of Continental Arms Corp. v. State Tax Commission, 130 AD2d 929, 516 NYS2d 338, revd on other grounds 72 NY2d 976, 534 NYS2d 362; Matter of David Hazan, Inc. v. Tax Appeals Tribunal, 152 AD2d 765, 543 NYS2d 545, affd 75 NY2d 989, 557 NYS2d 306; Matter of Waite, Tax Appeals Tribunal, January 12, 1995, confirmed __ AD2d __, 639 NYS2d 584; Matter of Linder, Tax Appeals Tribunal, June 3, 1993; Matter of Engel, Tax Appeals Tribunal, May 6, 1993.) It is clear from a review of the record in this matter that petitioner, or his designee, took possession of the furniture in New York State (see, Finding of Fact "2"). It is also clear that petitioner arranged to have the furniture shipped to him in Israel (see, Finding of Fact "3"). The transactions, therefore, are properly subject to sales tax.

D. The petition of Jack Uriel is denied, and the Division of Taxation's denial of petitioner's refund claim is sustained.

DATED: Troy, New York
January 16, 1997

/s/ Winifred M. Maloney
ADMINISTRATIVE LAW JUDGE